

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 153/2019**

% **20th February, 2019**

VINOD KUMAR AGGARWAL & ANR. Appellants

Through: Mr. Anand Yadav, Advocate.

versus

RELIANCE GENERAL INSURANCE CO. LTD. Respondent

Through: Mr. Bharat Bhushan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 153/2019 and C.M. Appl. Nos. 8169/2019 & 8172/2019

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the Judgment of the trial court dated 03.10.2018 by which the trial court has dismissed the suit filed by the appellants/plaintiffs by noting that despite repeated opportunities, the plaintiffs' witness failed to appear for cross-examination, and thus there being no evidence led on behalf of the appellants/plaintiffs, hence the

appellants/plaintiffs have failed to prove their case seeking rendition of accounts against the respondent/defendant. By seeking rendition of accounts the appellants/plaintiffs claimed moneys from the respondent/defendant on account of having expanded the business of the respondent/defendant.

2. The Order dated 03.10.2018 of the trial court closing the evidence of the appellants/plaintiffs is also impugned in the present appeal, and this order reads as under:

“CS NO 58152/2016
VINOD KR. AGGARWAL & ANR. V. RELIANCE GENERAL
INSURANCE CO. LTD.
03.10.2018

Present: Sh. Akram Khan, Id. Counsel for plaintiffs along with
Sh. Ritesh Aggarwal (son of plaintiff).
Sh. Pankaj Kumar Thakur, Id. Counsel for defendant.

Ld. Counsel for plaintiffs requests for an adjournment on the ground that he is on the panel of Delhi Legal Services Authority but is looking after the cases pertaining to Magistrate Courts only.

Receipt regarding the cost of Rs. 2,000/- deposited in PMRF filed. It be taken on record.

Cost of Rs. 5,000/- which was imposed on 01.06.2018 has not been paid. I have perused the previous ordersheets. Plaintiff is taking the present case in a casual manner. The matter was fixed for PE on 31.10.2014, 16.04.2015, 19.10.2015, 04.10.2016, 25.11.2016, 28.02.2017, 15.03.2017 and 30.08.2017. On 20.09.2018 last opportunity was granted to plaintiff to lead PE. No cogent reason has been given for adjournment. Cost of Rs. 5,000/- has not been deposited. I am not inclined to grant further adjournment in this matter. Hence, PE is closed. As plaintiff has not led evidence in this case, DE is also closed.

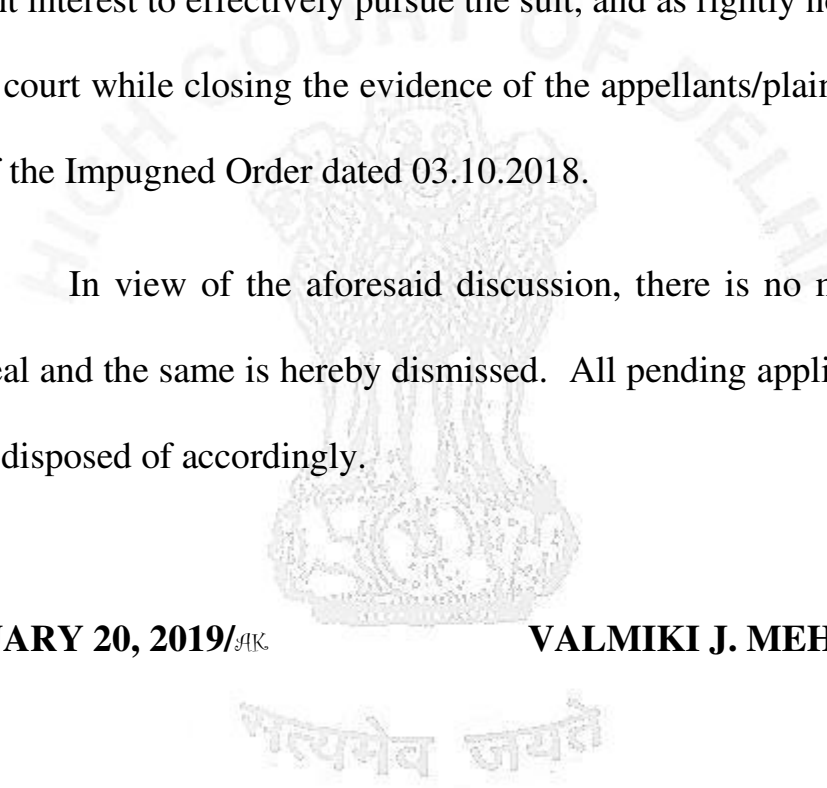
Vide separate judgment, the suit of the plaintiffs is dismissed. Decree sheet be prepared accordingly.
File be consigned to Record Room after due compliance.”

3. In my opinion, normally three opportunities are more than enough for a party to appear, and such adjournments are granted for appearing for cross-examination, but in this case various opportunities for over three years were given for the appellants’/plaintiffs’ witness to appear for cross-examination but these opportunities were not utilized, and therefore the trial court has rightly held that it had no option but to close the evidence of the appellants/plaintiffs. Once there is no evidence of the appellants/plaintiffs, the suit had to be dismissed, and has rightly been dismissed by the Impugned Judgment dated 03.10.2018.

4. In fact, I may note that the suit filed for the rendition of accounts was also misconceived because the appellants/plaintiffs ought to have filed a suit for recovery of moneys because the cause of action in the plaint filed in the subject suit by the appellants/plaintiffs was that the appellants/plaintiffs were to receive a percentage of commission and professional charges payable for increasing the business of the respondent/defendant. This amount necessarily had to

be a quantified amount but the appellants/plaintiffs to avoid paying court fees, after valuing the suit for pecuniary jurisdiction at Rs. 21,00,000/- had only paid court fees of Rs. 200/-. Therefore, in fact the suit itself was not properly framed, since court fees of Rs. 200/- only was paid, thus also showing that obviously there was no sufficient interest to effectively pursue the suit, and as rightly noted by the trial court while closing the evidence of the appellants/plaintiffs in terms of the Impugned Order dated 03.10.2018.

5. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed. All pending applications are also disposed of accordingly.

FEBRUARY 20, 2019/

VALMIKI J. MEHTA, J